

**Duke University and Amalgamated Transit Union,  
Local 1328.** Case 11-CA-15030

May 26, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY, OVIATT, AND RAUDABAUGH

Based on a charge filed by the Union on June 10, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 24, 1992, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of certain of its employees. The Respondent filed a timely answer admitting in part and denying in part the allegations in the complaint.

On December 2, 1992, the General Counsel, the Union, and the Respondent filed with the Board a stipulation of facts, with attached exhibits, and moved to transfer this proceeding to the Board. The parties agreed that the stipulation and exhibits, together with the charge, complaint and notice of hearing, and answer and amended answer, constitute the entire record in this case. They waived their right to a hearing and decision by an administrative law judge. On January 28, 1993, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. Thereafter, the General Counsel and the Respondent filed briefs.

On the entire record and briefs, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a private nonprofit educational institution with its main campus located at Durham, North Carolina. The Duke University Medical Center, an acute care hospital facility, is included in the Respondent's operations. During the 12-month period preceding execution of the stipulation, a representative period, the Respondent, in the course and conduct of its operations, derived gross revenue of at least \$1 million, of which \$50,000 was received from points outside the State of North Carolina.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. Facts**

Following the election held August 29, 1991, the Regional Director for Region 11, pursuant to the

Board's Decision on Review and Order of February 28, 1992,<sup>1</sup> certified the Union on March 30, 1992, as the exclusive bargaining representative of the employees in the following appropriate unit:

All full-time bus drivers employed by the Employer at its campus at Durham, North Carolina, excluding supervisors as defined in the Act.

By letter dated May 12, 1992, the Union requested that the Respondent recognize and bargain collectively with the Union as the exclusive representative of all employees in the unit described above. By letter dated May 22, 1992, the Respondent refused to recognize or engage in collective bargaining with the Union.

**III. CONTENTIONS OF THE PARTIES**

The Respondent contends that a unit of full-time bus drivers serving its entire university, including its on-campus acute care hospital, is not an appropriate unit. The Respondent claims that the Board erred in affirming the Regional Director's unit determination in the earlier representation case.

The General Counsel submits that the Board's unit determination in the earlier representation case precludes the Respondent from relitigating the unit issue in this unfair labor practice proceeding.

**IV. DISCUSSION**

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not allege newly discovered and previously unavailable evidence or special circumstances. The Respondent is attempting to relitigate issues that were or could have been litigated in the prior representation case. It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in an unfair labor practice proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); *Heuer International Trucks*, 279 NLRB 127 (1986). Accordingly, we conclude that the Respondent's refusal to bargain violates Section 8(a)(5) of the Act.

**CONCLUSIONS OF LAW**

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following constitutes a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

<sup>1</sup> *Duke University*, 306 NLRB 555.

All full-time bus drivers employed by the Employer at its campus at Durham, North Carolina, excluding supervisors as defined in the Act.

4. At all times since March 30, 1992, the Union has been the exclusive certified collective-bargaining representative of the employees in the appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing, since May 22, 1992, to recognize and engage in collective bargaining with the Union as the exclusive representative of the employees in the above described appropriate unit, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Duke University, Durham, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate bargaining unit:

All full-time bus drivers employed by the Employer at its campus at Durham, North Carolina, excluding supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain in good faith with the Union as the exclusive representative of its employees in the above-described unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its Durham, North Carolina facilities copies of the attached notice mark "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Amalgamated Transit Union, Local 1328, as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

All full-time bus drivers employed at our campus at Durham, North Carolina, excluding supervisors as defined in the Act.

WE WILL recognize and bargain with the Union as the exclusive representative of our employees in the bargaining unit with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, we will embody the understanding in a signed agreement.

DUKE UNIVERSITY